

CHAPTER 10
MEDICAL EXAMINERS

[Prior to 5/4/88, see 470—135.1 to 135.10]

ADMINISTRATIVE REGULATORY AUTHORITY

653—10.1(17A,147) Definitions. The following definitions shall be applicable to the rules of the Iowa state board of medical examiners:

“*Advanced emergency medical care provider*” shall mean any person trained to provide advanced emergency medical care, and who has been issued an advanced emergency medical care provider certificate by the department of public health.

“*Board*” shall mean the board of medical examiners of the state of Iowa.

“*Department*” shall mean the Iowa department of public health.

“*Director*” shall mean the director of public health.

“*Disciplinary proceeding*” shall mean any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

“*License*” shall mean a certificate issued to a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy or certified as a paramedic or advanced emergency medical technician under the laws of the state of Iowa.

“*Licensee*” shall mean a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy under the laws of the state of Iowa.

“*Licensee discipline*” or “*discipline*” shall mean any sanction the board may impose upon its licensees for conduct which threatens or denies citizens of this state a high standard of professional care.

“*Malpractice*” shall mean any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a physician in the practice of his profession.

“*Medical practice Acts*” shall defer to Iowa Code chapters 147, 148, 150 and 150A.

“*Order*” shall mean a requirement, procedure or standard of specific or limited application adopted by the board relating to any matter the board is authorized to act upon, including the professional conduct of licensees and the examination for licensure and licensure of any person under the laws of this state.

“*Peer review*” shall mean evaluation of professional services rendered by a professional practitioner.

“*Peer review committee*” shall mean one or more persons acting in a peer review capacity who have been appointed by the board for such purpose.

“*Physician*” shall mean a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy under the laws of this state.

“*The practice of acupuncture*” shall mean promoting, maintaining, or restoring health based on traditional oriental medical concepts of treating specific areas of the human body, known as acupuncture points or meridians, by performing any of the following practices:

1. Inserting acupuncture needles.
2. Moxibustion.
3. Applying manual, conductive thermal, or electrical stimulation through the use of acupuncture needles or any other secondary therapeutic technique except for the use of electromagnetic or ultra-sound energy sources.

“The practice of medicine and surgery” shall mean holding one’s self out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition and who shall either offer or undertake, by any means or methods, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition. This rule shall not apply to licensed podiatrists, chiropractors, physical therapists, nurses, dentists, optometrists, and pharmacists who are exclusively engaged in the practice of their respective professions.

“Prescription drugs” means drugs, medicine and controlled substances which by law can only be prescribed for human use by persons authorized by law.

“Profession” shall mean medicine and surgery, osteopathic medicine and surgery or osteopathy.

“Registered acupuncturist” or *“Registrant”* shall mean a person holding a certificate of registration to practice acupuncture granted by the board pursuant to Iowa Code chapter 148E.

“Respondent” shall mean a licensee charged by the board in a complaint and statement of charges with violations of statutes or rules relating to the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, paramedics or advanced emergency medical technicians.

“Rule” shall mean a regulation, requirement, procedure, or standard of general application prescribed by the board relating to either the administration or enforcement of Iowa Code chapters 147, 147A, 148, 148C, 150 and 150A.

This rule is intended to implement Iowa Code sections 147.76 and 148.6.

653—10.2(17A) Description of board. The purpose of the board of medical examiners is to administer and enforce the provisions of Iowa Code chapters 147, 148, 148E, 150 and 150A with regard to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and acupuncture, including, but not limited to, the examination of applicants; determining the eligibility of applicants for licensure by examination or endorsement; the granting of permanent, temporary, resident or special licenses to physicians; determining the ineligibility of physicians to provide supervision to physician assistants; the registration of nonphysician acupuncturists; the investigation of violations or alleged violations of statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and acupuncture, and the standard of care provided by advanced emergency medical care providers; and the imposition of discipline upon licensees and registrants as provided by statute or rule.

653—10.3(17A) Organization of board. The board is comprised of a total of ten members. Five members are persons licensed to practice medicine and surgery; two are persons licensed to practice osteopathic medicine and surgery; and three from the general public, who are not licensed to practice medicine and surgery or osteopathic medicine and surgery. All board members are appointed by the governor and confirmed by the Iowa senate. A board member’s term of office is three years and a member may not serve more than three terms or nine years. The board:

10.3(1) Makes policy relative to matters involving medical and acupuncture education, licensure, and discipline.

10.3(2) Conducts business according to established policy as approved by the members.

10.3(3) Organizes annually and elects a chairperson, vice-chairperson and a secretary from its membership.

10.3(4) Governs its proceedings by Robert's Rules of Order, Revised. A majority of the members of the board shall constitute a quorum. Official action requires a majority vote of members present.

10.3(5) Has the authority to:

a. Administer the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and the practice of acupuncture by registrants.

b. Review or investigate, upon receipt of a complaint or upon its own initiation, based upon information or evidence received, alleged violations of statutes or rules which relate to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and the practice of acupuncture by registrants.

c. Determine in any case whether an investigation or a disciplinary action is warranted.

d. Initiate and prosecute disciplinary proceedings.

e. Impose licensee discipline.

f. Request that the attorney general file appropriate court action for enforcement of the board's authority relating to licensees or other persons who are charged with violating statutes or rules the board administers or enforces.

g. Establish and register peer review committees.

h. Refer to a registered peer review committee for investigation, review, and report to the board any complaint or other evidence of an act or omission which the board has reasonable grounds to believe may constitute cause for licensee discipline. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction.

i. Determine and administer the renewal of licenses.

j. Establish and administer rules for continuing education requirements as a condition of license renewal.

k. Establish fees for examination, fees for the issuance of licenses and fees for other services provided by the board.

l. Establish committees of the board, the members of which, except for the executive committee, shall be appointed by the board chairperson and shall not constitute a quorum of the board. Committees of the board may include, but not be limited to:

(1) Executive committee. The membership shall be composed of the elected officers of the board and an at-large member appointed by the chairperson. Its duties may include, but are not limited to:

- Guidance and supervision of the executive director.
- Budgetary review and recommendations to the board.
- Review and recommendations to the board on rules and legislative proposals.

(2) Disciplinary committee. The membership shall be composed of board members appointed by the chairperson. Its duties may include, but are not limited to:

- Consider complaints in which preliminary investigation has shown further review or investigation is needed.
- Conduct interviews as needed with licensees under investigation or who are on disciplinary or consent agreement probation, except for final appearances.
- Refer matters requiring peer review to the appropriate peer review committee.
- Recommend cases to the board for appropriate action.

(3) Intake and screening committee. The membership shall be composed of board members appointed by the chairperson. Its duties may include, but are not limited to:

The review of complaints not related to professional liability matters and the recommendation for appropriate action including preliminary investigation; referral to the disciplinary committee for further review and consideration; or referral to the board for consideration of closure.

(4) License and examination committee. The membership shall be composed of board members appointed by the chairperson. Its duties may include, but are not limited to:

- The recommendation for appropriate action on completed applications for licensure.
- Conduct interviews with applicants when appropriate.
- Review licensure examination matters.
- To review and recommend to the board appropriate changes in licensure application forms.

(5) Professional liability claims review committee. The membership shall be composed of board members appointed by the chairperson. Its duties may include, but are not limited to:

- Review of professional liability claims cases.
- Recommendations for preliminary investigation.
- Referral to the disciplinary committee for further review and consideration; or referral to the board for consideration of closure.

(6) Allied health committee. The committee oversees all matters relating to the allied health professions under the board's jurisdiction. The committee's responsibilities include, but are not limited to:

- Review of cases referred by the department of public health involving EMT quality of care issues for possible disciplinary action.
- Evaluate applications and make recommendation to the full board on approval of a licensee to serve as a supervising or alternate supervising physician for licensed PAs.
- Serve as a liaison between the board and the board of physician assistant examiners where appropriate.
- Review and make recommendations to the full board on all matters relating to the registration of acupuncturists.

(7) Rescinded IAB 5/21/97, effective 6/25/97.

10.3(6) Appoints a full-time executive director who:

- a.* Is not a member of the board.
- b.* Under the guidance or direction of the board performs administrative duties of the board including, but not limited to: staff supervision and delegation; the administration and enforcement of the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and registered acupuncturists; issuance of subpoenas on behalf of the board or a committee of the board during the investigation of possible violations; enunciate policy on behalf of the board; and in addition, performs all other duties as provided by statute or rule or as delegated by the board.

653—10.4(17A) Official communications. All official communications, including submissions and requests, should be addressed to the Executive Director, Iowa State Board of Medical Examiners, Executive Hills West, Capitol Complex, Des Moines, Iowa 50319-0180.

653—10.5(17A) Office hours. The office of the board is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week, except holidays.

653—10.6(17A) Meetings and examinations. The board shall meet at least six times per year. Dates and location of board meetings may be obtained from the board's office.

Except as otherwise provided by statute, all board meetings shall be open and the public shall be permitted to attend the meetings.

653—10.7 Rescinded IAB 5/17/89, effective 6/21/89.

653—10.8(17A,147) Petition to promulgate, amend or repeal a rule.

10.8(1) An interested person or other legal entity may petition the board requesting the promulgation, amendment or repeal of a rule.

10.8(2) The petition shall be in writing, signed by or on behalf of the petitioner and contain a detailed statement of:

a. The rule that the petitioner is requesting the board to promulgate, amend or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in full with the matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining or bold-face.

b. Facts in sufficient detail to show the reasons for the proposed action.

c. All propositions of law to be asserted by petitioner.

10.8(3) The petition shall be in typewritten or printed form, captioned BEFORE THE IOWA STATE BOARD OF MEDICAL EXAMINERS and shall be deemed filed when received by the executive director.

10.8(4) Upon receipt of the petition the executive director shall:

a. Within ten days mail a copy of the petition to any parties named therein. Such petition shall be deemed served on the date of mailing to the last known address of the party being served.

b. Shall advise petitioner that petitioner has 30 days within which to submit written views.

c. May schedule oral presentation of petitioner's view if the board so directs.

d. Shall, within 60 days after date of submission of the petition, either deny the petition or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

10.8(5) In the case of a denial of a petition to promulgate, amend or repeal a rule, the board or its executive director shall issue an order setting forth the reasons in detail for denial of the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

653—10.9(17A) Public hearings. Prior to adoption, amendment or repeal of any rule, the board shall give notice of intended action by causing said notice to be published in the Iowa Administrative Code. Written comments relating to the proposed action by the board may be submitted to the board at its official address no later than 20 days after the notice has been published. The administrative rules review committee may, under the provisions of Iowa Code section 17A.8(6), on its own motion or on written request by any individual or group, review this proposed action at a regular or special meeting where the public or interested persons may be heard. A public hearing shall be scheduled prior to the adoption, amendment or repeal of any rule(s) provided the request for hearing is in writing, received no later than 20 days after the notice has been published and the request for hearing is made by: 25 interested persons, a governmental subdivision, an agency, an association of 25 persons, or upon the discretion of the board.

10.9(1) The chairperson of the board or a presiding officer appointed by the board shall preside over the public hearing.

a. The date, time and location of the public hearing shall be set by the board. The appropriate individuals, governmental subdivisions, agencies or associations making the request shall be notified of said date, time and location of hearing by certified mail.

b. Any individual(s) may present either written or oral comments pertinent to the rule(s) for which the public hearing has been scheduled. Any individual(s) desiring to make written comments shall submit these comments to the presiding officer prior to the hearing date. Any individual(s) desiring to make an oral presentation shall submit a written request to the board prior to the hearing date.

c. The authority of the chairperson of the board or presiding hearing officer during the public hearing includes:

(1) Setting a ten-minute time limit on oral presentations if necessary.

(2) Excluding any individual(s) who may be either disruptive or obstructive to the hearing; and

(3) Ruling that the oral presentation or discussion is not pertinent to the hearing.

d. The conduct of the chairperson of the board or presiding officer during the public hearing shall include but need not be limited to:

(1) Open the hearing and receive appearances.

(2) Enter the notice of hearing into the public record.

(3) Review rule(s) under adoption, amendment or repeal and provide rationale for the proposed action by the board.

(4) Receive oral presentations.

(5) Read into the official public record written comments which have been submitted.

(6) Inform those individuals present that within 30 days of the date of hearing, the board shall issue a written statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons either for accepting or overruling considerations urged against the rule.

(7) Adjourn the hearing.

Rules 10.1(17A,147) to 10.9(17A) are intended to implement Iowa Code sections 17A.3, 17A.4, 17A.7, 21.3 and 21.5.

653—10.10(17A) Declaratory orders.

10.10(1) Petition for declaratory order. Any person may file a petition with the board of medical examiners for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Board of Medical Examiners, at 1209 East Court, Executive Hills West, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The board of medical examiners shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF MEDICAL EXAMINERS

Petition by (Name of Petitioner)
for a Declaratory Order on
(Cite provisions of law involved).

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PETITION FOR
DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 10.10(7).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

10.10(2) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board of medical examiners shall give notice of the petition to all persons not served by the petitioner pursuant to 10.10(6) “c” to whom notice is required by any provision of law. The board of medical examiners may also give notice to any other persons.

10.10(3) Intervention.

a. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

b. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board of medical examiners.

c. A petition for intervention shall be filed at 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The board of medical examiners will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF MEDICAL EXAMINERS		
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

10.10(4) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board of medical examiners may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

10.10(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director, Board of Medical Examiners, 1209 East Court, Executive Hills West, Des Moines, Iowa 50319.

10.10(6) Service and filing of petitions and other papers.

a. When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Board of Medical Examiners, 1209 East Court, Executive Hills West, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board of medical examiners.

c. Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by 653—12.19(17A).

10.10(7) Consideration. Upon request by petitioner, the board of medical examiners must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board of medical examiners, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

10.10(8) Action on petition.

a. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the board of medical examiners or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in 653—subrule 12.11(1).

10.10(9) Refusal to issue order.

a. The board of medical examiners shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- (1) The petition does not substantially comply with the required form.
- (2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
- (3) The board does not have jurisdiction over the questions presented in the petition.
- (4) The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
- (5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- (6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- (7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

(9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

(10) The petitioner requests the board to determine whether a statute is unconstitutional on its face.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

c. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

10.10(10) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

10.10(11) *Copies of orders.* A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

10.10(12) *Effect of a declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board of medical examiners, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board of medical examiners. The issuance of a declaratory order constitutes final agency action on the petition.

This rule is intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

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